

REMARKS

This Response responds to the non-Final Office Action mailed 08/18/08 . Claims 1-26 and 57-95 are pending. Reconsideration of this application is respectfully requested in light of the remarks herein.

Substance of Examiner Interview of December 16, 2008

On December 16, 2008, Applicants' representatives Douglas Pearson and Leland Gardner met with Examiners Matthew L. Hamilton and Donald Champagne to discuss the rejections issued in the Office Action mailed August 18, 2008. Specifically, Applicants' representatives and Examiners discussed the Office's reliance on Official Notice in alleging obviousness over the cited references. Applicants' representatives contended that the Office's reliance on Official Notice was misplaced since it was presented as principal evidence in the rejection, and Applicants' representatives understood the examiners to agree in this regard. Agreement was reached that Applicants' representatives would file a response and the Examiners would conduct a further search and issue a new action. Applicants wish to thank the Examiners for conducting the interview.

Art Rejections

In the Office Action, claims 1-26 and 57-94 stand rejected as allegedly obvious under 35 U.S.C. § 103(a) in view of U.S. Patent No. 6,374,177 ("Lee") and Official Notice of certain advertising and promotion practices. This rejection is respectfully traversed.

Independent claim 1 is directed to a method for communicating data content. Claim 1 recites, among other things:

accumulating said information regarding said plurality of actions until a predetermined threshold associated with said plurality of actions is reached, and

after reaching said threshold, communicating a request for said multiple items of data content of interest.

In the Office Action at page 3 the Examiner acknowledges that Lee does not teach these features and instead relies upon Official Notice to reject these features. Applicants assert that reliance on Official Notice is improper in this instance.

As stated at MPEP § 2144.03, "Official Notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be

common knowledge in the art are capable of instant and unquestionable demonstration as being well-known.” In this instance, the Office purports to support the use of Official Notice by invoking unsupported examples of purchasing multiple items from Publisher’s Clearing House or Best Buy. However, these examples are far removed from the claimed subject matter of rendering content on a digital radio receiver and then making a request for items from that platform. Additionally, MPEP § 2144.03 recites that “[i]t is never appropriate to rely solely on ‘common knowledge’ in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based.” Applicants amended claim 1 to specifically recite a threshold associated with plural actions for requesting multiple items of interest, and the Office relies on Official Notice to dispose of this limitation. Thus this approach improperly uses Official Notice to supply “principal evidence” contrary to the dictates of MPEP § 2144.03.

Additionally, the Office Action is based on a flawed obviousness standard. The Office Action at page 3 recites, for example: “Lee could have obviously modified the invention to receive information regarding a plurality of actions entered in a man-machine interface and the tracking of the user’s actions in regard to interest [sic] solely one product or a variety of products.” As the Office is aware, “could have obviously modified” is not a valid premise upon which to base an obviousness rejection.

The reasoning of the rejection is also unduly broad. The Office Action states that “[o]ne would have been motivated to receive and track information regarding a plurality of actions associated with multiple items in order to gather and collect data.” This purported reason is so broad as to be essentially meaningless. It bears no particularity whatsoever to the subject matter recited in the claim. Applicants respectfully request clarification so that a suitable response can be formulated.

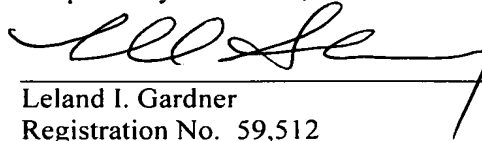
The rejection of claim 1 over Lee relying on Official Notice should be reconsidered and withdrawn for at least these reasons. The rejection of independent claims 16, 57, 68, 76 and 87 should be withdrawn for similar reasons. Additionally, the remaining claims are allowable at least by virtue of dependency from claims 1, 16, 57, 68, 76 and 87, and their allowance is respectfully requested.

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In light of the above amendments and remarks, the Applicants respectfully request that the Examiner reconsider this application with a view towards allowance. The Examiner is invited to call the undersigned attorney if a telephone call could help resolve any remaining items.

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Respectfully submitted,



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